THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No.14604 of 2006

Dated: 18.07.2006

Between:

Y. Radha Krishna, S/o late R. Ramachander, R/o H.No. 30-742, Vinayak nagar, Neredmet, Secunderabad.

.... PETITIONER

AND

The Depot Manager, APSRTC,
Kushaiguda, Kushaiguda Depot, Hyderabad and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No.14604 of 2006

Order:

Assailing the proceedings dated 07.12.2005, passed by respondent No.1, terminating the services of the petitioner, without issuing charge sheet and without conducting any enquiry, the petitioner filed the present writ petition to declare the same as illegal and arbitrary, and consequently to direct the respondents to reinstate the petitioner into service with all consequential benefits.

The case of the petitioner is that he was appointed as a Conductor on contract basis in APSRTC. While he was working as such, respondent No.1, namely Depot Manager, without issuing any charge sheet and without conducting any enquiry, passed the impugned termination order dated 07.12.2005, alleging that while conducting the bus, he committed certain cash and ticket irregularities on 28.11.2005. Aggrieved by the said order, the petitioner preferred appeals before respondent Nos. 2 and 3 on 12.12.2005 and on 07.01.2006 respectively, but so far no orders have been passed thereon. Hence, he filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-Corporation.

Learned counsel for the petitioner submitted that before passing the impugned removal order no opportunity was given to the petitioner, hence, the same is liable to be set aside. In support of his contention that no order of removal can be passed against an employee without providing him an opportunity to put forth his case, he relied on a judgment of the apex Court reported in ***Prithipal Singh v. State of***

Punjab*[1]*. He further submits that aggrieved by the said termination order, the petitioner preferred appeals before respondent Nos.2 and 3, but they have not considered the same so far.

It is the admitted case of the respondents that no opportunity whatsoever was given to the petitioner to put forth his case before passing the impugned order of termination. In ***Prithipal Singh v. State of Punjab (*1 supra),** the apex Court held thus:

> "The aforesaid record plainly reveals recording of misconduct of the appellant. It records, he has disobeyed the orders of his superiors. Once this is recorded in the service record, which is disclosed by the respondents, it cannot be said there is no stigma attached to the order of discharge. Once there is stigma, the principle is well settled, an opportunity has to be given before passing any order. Even where an order of discharge looks innocuous, but on close scrutiny, by looking behind the curtain, and if any material exists of misconduct and which is the foundation of passing of the order of discharge, or such could be reasonably inferred, then it leaves no room of doubt that any consequential order, even of discharge would be construed as stigmatic. Then opportunity has to be given. It is also not in dispute that no opportunity was given to the respondent before passing the impugned order of discharge. On the facts of this case, we are deliberately not going into the wider question, whether any opportunity is necessary or not before passing an order under the aforesaid Rule, but suffice it to say that on the facts of this case, as we have recorded above it was obligatory for the respondent to have given an opportunity to the appellant before passing the discharge order. Hence the impugned order of discharge dated 22nd February, 1991, is unsustainable and is set aside."

In the instant case, though no opportunity was given to the petitioner to put forth his case before passing the impugned order of removal, but having regard to the fact that the appeals preferred by the petitioner against the said termination order are said to be pending consideration before respondent Nos.2 and 3,

I deem it appropriate to dispose of the writ petition with the following directions.

Respondent Nos.2 and 3 are directed to consider the appeals, preferred by the petitioner against the impugned termination order

passed by respondent No.1, and pass appropriate orders thereon.

Accordingly, the writ petition is disposed of. No costs.

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N.V. RAMANA, J.

Date: 18.07.2006
Nsr/Ksr

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[1] 2001 AIR SCW 2287